

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JOSE TAMAYO,**

**Defendant.**

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**CASE NO. 8:09CR65**

**ORDER**

This matter is before the Court on the Defendant's pro se motion for leave to file a notice of appeal out of time (Filing No. 168).

The Defendant, Jose Tamayo, pleaded guilty to Counts I and IV of the Indictment charging him with conspiring to distribute more than 500 grams of methamphetamine (Count I) and criminal forfeiture (Count IV). His plea agreement included a waiver of his right to appeal from his conviction. No objections were filed to the Presentence Investigation Report. On August 10, 2009, he was sentenced at his sentencing guideline range of 120 months, the statutory mandatory minimum. On January 10, 2011, Tamayo filed his motion for leave to file a notice of appeal out of time.

Federal Appellate Rule of Procedure 4(b)(1)(A)(i) provides that, under the circumstances presented in this case, a criminal defendant's notice of appeal must be filed within 14 days of the entry of the judgment or order being appealed. Federal Appellate Rule of Procedure 4(b)(4) provides that the 14-day period may be extended by 30 days upon a finding of excusable neglect or good cause.

In this case, even assuming Tamayo has shown excusable neglect or good cause, the allowable extended time period for filing a notice of appeal has passed.

IT IS ORDERED:

1. The Defendant's pro se motion for leave to file a notice of appeal out of time (Filing No. 168) is denied; and
2. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 13<sup>th</sup> day of January, 2011.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge